THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.22163 OF 2005

Dated: 28th November, 2005.

Between:

1. Gaddam Gopaiah and others. … Petitioners

And

1. The District Social Welfare Officer, Karimnagar and others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.22163 OF 2005

ORDER :

The petitioners, 5 in number, filed this writ petition seeking a Writ of Mandamus directing the respondents not to demolish the houses of the petitioners situated in Sy.No.1000 of Julapally village and Mandal of Karimnagar District and not to dispossess the petitioners from the said land.

The facts, as stated in the affidavit in support of the writ petition, are as under :

The petitioners are the owners and possessors of the houses bearing Nos.4-37, 8-50/A, 8-21 and 8-23 respectively situated in Sy.No.1000 of Julapally village and Mandal of Karimnagar District. Their houses have been in existence since more than 50 years from the time of their ancestors. They have their cattle sheds and also keep their hayricks and fodder in the adjacent land for the purpose of their cattle. All the houses of the petitioners have been assessed to house-tax by the Gram Panchayat. One Gaddam Lachi Reddy sold 5 guntas of land out of Sy.No.1000 on 9-4-1991 to the Gram Panchayat, Julapally village wherein the Gram Panchayat established their office. While so, the Social Welfare Department proposed to establish a Hostel for B.C. Girls in the village and for the said purpose they identified the land in Sy.No.1000 and wanted to construct a hostel in the very land in which the houses of the petitioners are located. Accordingly, they are taking steps to dispossess the petitioners high-handedly. It is alleged that the respondents 1 to 3 came to the land of the petitioners on 5-10-2005 with a Tractor fixed with blade and demolished the compound walls of the houses of the petitioners to some extent. That apart, the petitioners were directed to vacate the houses immediately, failing which the houses will be forcibly demolished. Hence, this writ petition contending that the high-handed action of the respondents in attempting to demolish the houses of the petitioners without any notice is illegal, arbitrary and amounts to gross abuse of power.

The third respondent - Mandal Revenue Officer, Julapally village and Mandal of Karimnagar District filed a counter-affidavit on behalf of the respondents denying the alleged high-handed action of the respondents as pleaded by the petitioners. It is further stated that the entire Sy.No.1000 is a Government Poramboke land and the

petitioners have illegally encroached the same and unauthorisedly constructed the houses. It is also stated that as per the record the petitioners 2 and 4 are not residing in Sy.No.1000 at all and so far as other petitioners, the mere fact that the Gram Panchayat is collecting tax does not confer any right and title on them with regard to the houses in question. The plea of the petitioners that they are keeping the hayricks and fodder on the open land for the purpose of their cattle has been categorically denied. The further plea that on 9-4-1991 the Gram Panchayat purchased 5 guntas of land from Gaddam Lachi Reddy has also been denied and it is stated that the entire survey number is Government land admeasuring 35 guntas and the said Gaddam Lachi Reddy was also one of the encroachers who constructed a tiled house thereon. In the year 1976 the Gram Panchayat constructed its own building in Gramakantham at Julapalli village and shifted its office to the said building from where it is functioning as of today. It is further explained that the petitioners 1, 3, 5 and some others have encroached and constructed houses unauthorisedly in Ac.0-08 guntas of land out of total extent of 35 guntas of Government land situated in Sy.No.1000. The Gram Panchayat building is situated in an extent of 181 sq. yards (0.1 ½ guntas) in Sy.No.1000. The Social Welfare Department proposed to construct B.C. Girls Hostel on the back side of Gram Panchayat building to its North. It is categorically stated that the third respondent has proposed the construction of Girls Hostel on the Government land which is free from encroachment and that the allegation that the proposal was to construct hostel in the very land in which the petitioners' houses are existing is false. It is further stated that it is only an apprehension of the petitioners that they will be evicted from the Government land in their occupation. The allegation of the petitioners that on 5-10-2005 the respondents 1 to 3 came to their land with a Tractor and attempted to demolish the compound walls has also been categorically denied and it is stated that the respondents 1 to 3 have visited the proposed site which is situated behind the Gram Panchayat building and levelled the site proposed for B.C. Girls Hostel which is in no way connected to the site wherein the petitioners have illegally constructed their houses.

The petitioners filed an affidavit in reply reiterating the plea that they are in possession of the vacant land adjacent to their houses since more than 50 years. It is also stated that the petitioners 2 and 4 are also residing in the houses situated in Sy.No.1000. It is further stated that the land situated in Sy.Nos.969 and 970 which is

at a distance of about 500 yards from the land in question measuring about 5 acres is also in the occupation of the Gram Panchayat since long time and the same is more suitable for the purpose of construction of B.C. Girls Hostel. Hence, the proposal to construct the hostel by dispossessing the petitioners from the land in their occupation is unwarranted and unjustified.

I have heard the learned Counsel for both the parties as well as the learned Government Pleader for Social Welfare appearing for the respondents.

The fact that Sy.No.1000 is the Government Land is not in dispute. However, the petitioners pleaded that the houses in their occupation were constructed long back by their ancestors and that they have been in continuous possession and enjoyment of the same for the past about 50 years by paying house-tax to the Gram Panchayat. Even assuming that the petitioners, being encroachers have been in unauthorised possession of the land in question, the law is well settled that they can be evicted only following due process of law. It is not open to the respondents to dispossess them or demolish the houses in their occupation without initiating proceedings under the provisions of the A.P. Land Encroachment Act or any other relevant statute.

The learned Government Pleader does not dispute the said legal position, however submits that the plea of the petitioners that the respondents have been interfering with the possession of the petitioners and attempted to demolish the houses in their occupation is absolutely false. The respondents in their counter-affidavit have categorically stated that they never interfered with the possession of the petitioners nor demolished the compound walls and they did not even make any such attempt as alleged by the petitioners.

Though the respondents do not dispute the proposed construction of B.C. Girls Hostel in Sy.No.1000, it is their specific case that they want to construct the same in the vacant land which is not under encroachment and that the houses of the petitioners are in no way affected by the proposed construction of the hostel.

In view of the specific averments in the counter-affidavit of the respondents that they are not interfering with the houses of the petitioners, no further enquiry is necessary in the writ petition.

However, the leaned Counsel for the petitioners vehemently contended that not only the houses in their occupation, but the land adjacent to the houses of the petitioners is also in possession and enjoyment of the petitioners from the time immemorial and that they have been using the said land for the purpose of keeping their hayricks and fodder and therefore the respondents cannot be allowed to make any construction even in the said vacant land.

As noted above, the claim of the petitioners that they have been in possession and enjoyment of the open land adjacent to their houses has been categorically denied by the respondents. It is neither proper nor possible for this Court to enquire into such a highly disputed question of fact and record any finding. In the absence of any material to substantiate their claim with regard to the said vacant site, particularly when the respondents have categorically denied their possession, no relief can be granted to the petitioners in the writ petition with regard to the vacant land which admittedly belongs to the Government. However, this shall not preclude the petitioners to work out the appropriate remedy as available under law by producing necessary evidence to substantiate their claim that the said land is in their possession and enjoyment.

Accordingly, the Writ Petition is disposed of recording the statement of the respondents that they are not interfering with the houses in occupation of the petitioners in Sy.No.1000 of Julapally Village and Mandal, Karimnagar District and further making it clear that they shall not be dispossessed from the said houses without following due process of law. No costs.

28th November, 2005.

Note:- CC by tomorrow.

(B/O)

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